



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
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DIN - 20250671MN000000D24C

क	फ़ाइल संख्या FILE NO.	S/49-154/CUS/MUN/2023-24
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-060-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	10.06.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original No. MCH/ADC/MK/197/2023-24 dtd. 11.10.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	10.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Insolation Energy Ltd. Khasra No. 766/2, Village Bagwada, Tehsil Amer, Jaipur, Rajasthan - 302012

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER-IN-APPEAL

Appeal has been filed by M/s Insolation Energy Ltd., Khasra No. 766/2, Village Bagwada, Tehsil Amer, Jaipur, Rajasthan - 302012, (hereinafter referred to as the 'appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. MCH/ADC/MK/197/2023-24 dtd. 11.10.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant had filed a Bill of Entry no. 4189611 dated 04.06.2021 for import of "Photovoltaic Poly Solar Cell (157157 MM) 5BB 18.8% A Grade & Photovoltaic Mono Perc Solar Cell 158.75158.75 MM, 5BB 22% A Grade" availing the benefit of Sr. No. 1445(I) of Notification No. 046/2011 dated 01.06.2011 on the basis of Certificates of Origin purportedly issued by the Ministry of International Trade and Industry, Malaysia. Details of the Bill of Entry are as under:

Sl. No.	Bill of Entry and Date	Description of Goods	Ass. Value of the goods (In Rs.)	COO reference no.	Name of Supplier
1	4189611 dated 04.06.2021	Photovoltaic Poly Solar Cell (157157 MM) 5BB 18.8% A Grade & Photovoltaic Mono Perc Solar Cell 158.75158.75 MM, 5BB 22% A Grade	2,03,32,020	KL-2021-AI-21-044218 dated 31.05.2021	M/s MZH Maju Industry, Malaysia

2.1 Intelligence gathered by the Officers of SIIB Section, Customs Mundra indicated that the appellant had wrongly availed the benefit of the preferential rate of duty, therefore the above mentioned Bill of Entry was taken up for further verification. During the investigation, a letter F.No. 456/519/2021-CUS.V dated 02.02.2022 received from Ministry of Finance, Department of Revenue, CBIC, New Delhi regarding the verification of Country of Origin Certificates under AIFTA Preferential Certificates wherein they gave reference of email dated 07.12.2021 received from the Principal Assistant Director, Trade and Industry Co-operation Section, Trade and Industry Support Division, Ministry of International Trade and Industry, Malaysia. Relevant portion of the said email has been reproduced as under:

"For your information, MITI has never received a COO application from the

abovementioned companies in our ePCO system.”

2.2 Further, the mail included the company name i.e. M/s MZH Maju Industry, Malaysia. As the issuing authorities had confirmed that they never received a Country of Origin application from M/s MZH Maju Industry, Malaysia, therefore, it appeared that COOs submitted by the appellant to avail the benefit of Sr. No. 1445(I) of Notification No. 046/2011 dated 01.06.2011 were fake. The details of the imports and the amounts of duties foregone as a result of producing the fake certificate of origin are as under:

Sr. No.	B/E No. & Date	A.V.	SCN 200%	BCD as 20%	IGST as 5%	Total duty	Duty Paid	Diff. Duty
1	4189611 04.06.2021	2,03,32,020	20,66,464	4,66,640.40	12,40,252.22	57,13,297.62	10,16,601	46,96,697

2.3 Therefore, a Show Cause Notice was issued to the appellant proposing as to why:-



i. The goods imported vide bill of entry as mentioned in Table-A with Assessable Value of Rs. 2,03,32,020/- should not be confiscated under Section 111(m) & 111(o) of the Customs Act, 1962.

ii. The benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, mentioned in Table-A should not be denied and the Differential duty amount of Rs. 46,96,697/- (Rupees Forty Six Lakh Ninety Six Thousand Six Hundred and Ninety Seven only) should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962 or otherwise.

iii. Interest on the amount mentioned in Para 3(ii) above should not be recovered under the provisions of Section 28AA of the Customs Act, 1962 or otherwise.

iv. Penalty under Section 114A of the Customs Act, 1962 should not be imposed on M/s Insolation Energy Pvt. Ltd in relation to the said goods or otherwise.

v. Penalty under Section 114AA of Customs Act, 1962 should not be imposed on M/s Insolation Energy Pvt. Ltd in relation to said goods or

At

otherwise.

vi. Penalty under Section 117 of the Customs Act, 1962 should not be imposed on M/s Oriental Trade Links for violation of provisions of Custom Brokers Licensing Regulations, 2018 or otherwise.

2.4 The adjudicating authority vide the impugned order as ordered as under:

- i. She ordered the confiscation of goods imported vide bill of entry no. as mentioned in Table-A valued at Rs. 2,03,32,020/- (Rupees Two Crore Three Lakh Thirty Two Thousand and Twenty only) under Section 111(m) & 111(o) of the Customs Act, 1962.
- ii. She denied the benefit of Notification No. 46/2011-Cus dated 01.06.2011, as amended, and confirm the demand of differential duty of Rs. 46,96,697/- (Rupees Forty Six Lakh Ninety Six Thousand Six Hundred and Ninety Seven only) under Section 23(4) of the Customs Act, 1962.
- iii. She ordered the recovery of Interest on the amount of Rs. 46,96,697/- under Section 28AA of the Customs Act, 1962.
- iv. She imposed a penalty of Rs. 46,96,697/- (Rupees Forty Six Lakh Ninety Six Thousand Six Hundred and Ninety Seven only) plus penalty equal to applicable interest under Section 28AA on M/s Insolation Energy Pvt. Ltd under Section 114A of the Customs Act, 1962.
- v. She also imposed a penalty of Rs. 20,00,000/- (Rs. Twenty Lakhs only) on the Importer M/s Insolation Energy Pvt. Ltd under Section 114AA of the Customs Act, 1962.
- vi. She imposed a penalty of Rs. 2,00,000/- (Rs. Two Lakhs only) on M/s Oriental Trade Links under Section 117 of the Customs Act, 1962 for violation of provisions of Custom Brokers Licensing Regulations, 2018.



3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the appellant has filed the present

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appeals wherein they have submitted grounds which are as under:-

3.1 The Adjudicating Authority in para 5.8 of the impugned order has observed that the burden of claiming the exemption correct and properly is on the importer during the course of assessment, there is no rhyme or reason to make out a claim for an alternate notification at this stage. The Adjudicating Authority has not considered the following submissions specially the findings of the Hon'ble Apex Court and various higher judiciary while adjudicating on this aspect of the case. If the Adjudicating Authority would have considered the submitted judgments than Adjudicating Authority would have found enough rhyme or reason to make the claim at the later stage.

3.2 It is well-settled law that if the benefit of an alternative exemption notification is otherwise available to an assessee, even though not claimed at a time of the import of the goods, the benefit cannot be denied. It is submitted that the goods imported by the appellant were also eligible for benefit of general exemption notification during the relevant time period notification no. 24/2005-CUS dated 01.03.2005 at sr. no. 23. In view of the general notification the imported goods are also exempted from the whole of the duty of customs leviable thereon under the said First Schedule of the Customs Tariff Act at Sr. no 23 of 24/2005.

3.3 The appellant places reliance on the case of SHARE MEDICAL CARE Versus UNION OF INDIA 2007 (209) E.L.T. 321 (S.C.) wherein the Hon'ble Apex Court has held that if an applicant does not claim benefit under a particular notification at the initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage. In the case of COMMISSIONER OF CENTRAL EXCISE, NOIDA-II Versus INDOSOLAR LTD. 2019 (367) E.L.T. 679 (Tri. - All.) [Squarely covers the present case] the Hon'ble Tribunal while dismissing the revenue's appeal has held that it is Well-settled rule that if benefit of notifications is otherwise available to assessee, same cannot be denied even if benefit not claimed initially. In the case of RALLIS INDIA LTD. Versus COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI 2017 (358) E.L.T. 285 (Tri. - Mumbai) the Hon'ble Tribunal has held that benefit under another Notification though not claimed at the time of import not to be denied if it is otherwise available.



3.4 Reliance is also placed on the following case laws: -

- a) APPLICOMP India Ltd. v Commissioner of Customs, Bangalore - 2007 (213) ELT 317 (Tri. Bang.)
- b) Commissioner of Customs (Import), Nhava Sheva v S.K. Weaving Pvt Ltd. 2018 (361) E.L.T. 383 (Tri. - Mumbai) wherein it was held that any beneficial notification even if at the time of clearance of goods is not claimed, the same can be claimed at a later stage.
- c) Commissioner of Central Excise, Ahmedabad v Suresh C. Nayi 2010 (262) ELT 1116 (Tri - Ahmd.): -

3.5 In the case of H.C.L. LIMITED Versus COLLECTOR OF CUSTOMS, NEW DELHI 2001 (130) E.L.T. 405 (S.C.) it was held by the Hon'ble Supreme Court that there are two exemption notifications that cover the goods in question, the assessee is entitled to the benefit of that exemption notification which gives him greater relief, regardless of the fact that that notification is general in its terms and the other notification is more specific to the goods. Therefore, in view of above, the goods imported vide BOE No. 4189611 dated 04.06.2021 is exempt from whole of the duty of customs at sr. no. 23 of notification 24/2005-CUS dated 01.03.2005. The Adjudicating Authority has erred in law as benefit of alternative exemption notification can be claimed at a later stage as held by Hon'ble Apex Court and various higher judiciary. Therefore, the Adjudicating Authority in the impugned order has wrongly and illogically denied the claim for alternative exemption notification and demanding the differential duty on the ground that the same cannot be claimed at later stage which is bad in law and should be set aside on this ground alone.

3.6 It is submitted that department has invoked section 28(4) of the Customs Act, 1962 against the Appellant. In the present case there has been no willful mis-statement or suppression of facts as alleged by the department in para 7.2 of the SCN. The Appellant is having the option to choose between the two exemption notification. In case the exemption from customs duty is denied on the exemption no. 46/2011 CUS dated 01.06.2011. Alternatively, the Appellant is having the option to avail the benefit in another available exemption no. 24/2005-CUS dated 01.03.2005 at sr. no. 23. In these facts, there was no need on the part of the Appellant to mis-represent or suppress fact. Therefore,

the invocation of extended period to demand Duty under Section 28(4) of the Customs Act, 1962 with respect to imported goods is not tenable at all.

3.7 Since there is no implication of any differential duty liability therefore demand of interest under section 28AA is not sustainable at all. The Adjudicating Authority in para 5.5 of the impugned order and the department in para 8 of the SCN, has alleged that the goods in the BoE do not correspond to the documents submitted. Hence the goods are liable for confiscation under section 111(m) of the customs Act. It is submitted that the Appellant has cleared the goods after filing proper bill of entry and on payment of applicable duties of customs. Further the Appellant has declared the correct value of the imported goods. There is no allegation in the SCN that the goods do not corresponds to value and description declared by the Appellant. The goods are also eligible for exemption under alternative notification and hence there is no loss to the exchequer on the same.



The Appellant relies on the case of LEWEK ALTAIR SHIPPING PVT. LTD. Versus COMMISSIONER OF CUS., VIJAYAWADA 2019 (366) E.L.T. 318 (Tri. - Hyd.) wherein the Hon'ble Tribunal has held that Mention of wrong tariff or claiming benefit of an ineligible exemption notification cannot form the basis for confiscation of goods under Section 111(m) of Customs Act, 1962. It is submitted that LEWEK ALTAIR (Supra) was further approved by the Hon'ble Supreme Court in Commissioner v. Lewek Altair Shipping Pvt. Ltd. - 2019 (367) E.L.T. A328 (S.C.). Reliance is further placed on the case of SIRTHAI SUPERWARE INDIA LTD. Versus COMMR. OF CUSTOMS, NHAVA SHEVA-III 2020 (371) E.L.T. 324 (Tri. - Mumbai) wherein the Hon'ble Tribunal has held that Fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of Sections 111(m) and 111(o) of Customs Act, 1962.

3.9 In para 5.7 of the impugned order and in para 7.4 of the SCN, it has been alleged that the COO is not authentic. Hence the goods are liable for confiscation under section 111(q) of the customs Act. The department has not pointed out specifics as to how the Appellant has contravened the provisions of chapter VAA or any rule made thereunder. It is submitted that the Appellant has filed the COO certificate and other documents with the department. Only at a later stage the department relying on the mail of MITI, Malaysia has raised the allegation that the COO certificate is not authentic. However, the mail does not

mention the particulars of the COO certificate pertaining to the Appellant. The goods are also eligible for exemption under alternative notification and hence there is no loss to the exchequer on the same. Therefore, the confiscation under section 111(q) of the Customs Act, 1962 is not sustainable and should be set aside.

3.10 The Adjudicating Authority has imposed penalty of Rs. 46,96,697/- plus penalty equal to applicable interest under section 28AA on differential duty demanded and confirmed under section 114A. The Adjudicating Authority has not considered the following submissions of the appellant in this regard at all. It is submitted that penalty under Section 114A of the Customs Act, 1962 can be imposed only when there has been instances of short payment or non-payment of duty by reason of collusion or any willful mis-statement or suppression of fact. In the present case the Appellant has not suppressed any fact nor misdeclared any fact. It is submitted that in the case of Sirthai Superware India Pvt. Ltd. (Supra), the Hon'ble CESTAT Mumbai held that in cases where description of goods matches the actual content of the consignment and if the issue is with respect to classification, penalty cannot be imposed either under Section 112 or 114A of the Customs Act, 1962.

3.11 In the SCN, the Department failed to adduce any evidence to suggest collusion or willful mis-statement, and thus in light of the provision as well as Judicial precedents, penalty under Section 114A cannot be imposed on the Appellant. Reliance is placed on the case of C.C., C. EX. & SERVICE TAX, HYDERABAD-II Versus SANDOR MEDICAIDS PVT. LTD 2019 (367) E.L.T. 486 (Tri. - Hyd.). Further Reliance is placed on the following cases:

- a) Surbhit Impex P. Ltd. Vs Commissioner of Customs (EP), Mumbai 2012 (283) E.L.T. 556 (Tri. - Mumbai)
- b) International Trade Affairs vs. Commissioner of Customs, Hyderabad 2003 (162) E.L.T. 584 (Tri. - Bang.)

Hence, no penalty should have been imposed on the appellant under section 114A and same needs to be set aside.

3.12 It is submitted that under section 114A penalty can be levied equal to the differential duty or interest but not on differential duty and interest i.e., on both at the same time. Although the penalty is not imposable still it is

submitted that the Adjudicating Authority has imposed the penalty against the provision of laws i.e., penalty equal to differential duty and interest. Here the Adjudicating Authority has erred in law and imposed penalty equal to sum of both the differential duty and interest.

3.13 It is submitted that to impose penalty under Section 114AA a positive mens-rea is a must. Neither the Adjudicating Authority nor the department has brought out any material fact as to how the Applicant had knowledge that the certificate of origin was not authentic. It is further submitted that the department has also not brought any material fact which establishes how the particular COO of the Applicant was not genuine. Therefore, no penalty should have been imposed on the appellant under section 114AA of the act and same needs to be set aside.

3.14 The Adjudicating Authority in para 5.6 & 5.7 of the impugned order and the department in paragraph 7.1 and 7.2 of the SCN, has alleged that the Applicant by mis-representation/suppression of facts has hatched conspiracy to avail the benefits of concessional rate of Customs duty under Notification 46/2011-Cus dated 01.06.2011 by submitting fake certificate of COOs. In this regard it is submitted that the Adjudicating Authority has not disputed the submissions made by the applicant that there is no verification mechanism available with the applicant to authenticate the veracity of COO certificate. It is submitted that the Applicant has not mis-represented or suppressed facts. The Applicant was having the COO certificate given by the supplier. To verify the veracity of the COO, the Applicant checked the reference number, looked at the authentication marks like issuing authority letterhead and sign & stamp on the certificate given by the supplier of the goods. The Applicant, unlike the department, does not have a mechanism to check the authenticity of the COO certificate obtained from the supplier. Further submitted that the Applicant was having the option of the alternative general exemption notification 24/2005-Cus at his disposal for NIL rate of duty at the time of importation. If the Applicant had an idea that the COO might not be genuine, then the Applicant would not have opted for the Notification 46/2011-Cus.

3.15 The department in para 7.4 & 8 of the SCN has alleged that the Applicant deliberately and intentionally submitted the COO certificate to misstatement. However, it is submitted that how it is deliberate or deliberate when the certificate of COO was given to them by the supplier. The Applicant is

having the option of alternative general exemption notification wherein the customs duty is exempted. The department relied upon the mail wherein the statement by the MITI, Malaysia is vague, as it does not specify the duration for which the COO applications are being considered. Further the mail did not include the Bill of entry 4189611 dated 04.06.2019 or mention of COO reference no. KL-2021-AI-21-044218 dated 31.05.2021 pertaining to the claimed goods. However, in case it is found that the COO is not genuine, then it is the supplier who is at fault and not the applicant. The department has the duty to check the veracity of COO certificate which it verifies.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 22.05.2025 following the principles of natural justice wherein Shri Jayant Kumar, Advocate appeared on behalf of the Appellant. He reiterated the submissions made in the appeal memorandum

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Custom House, Mundra and the defense put forth by the appellant in their appeal. The Appellant has filed the present appeal on 29.12.2023. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 11.10.2023 as 07.11.2023. Hence, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has submitted a copy of the challan No.6142 dtd 27.12.2023 towards payment Rs.3,52,253/- i.e 7.5 % of duty i.e Rs. 46,96,697/- As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

5.1 On going through the material on record, I find that following issues are to be decided in the present appeal:

- (i) Whether the benefit of an alternative exemption notification (Notification No. 24/2005-CUS) can be claimed by the appellant at the appellate stage.



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- (ii) Whether the adjudicating authority correctly applied the principles of judicial discipline in considering the appellant's submissions regarding alternative exemption.
- (iii) Whether the invocation of the extended period of limitation, confiscation, and penalties are justified in light of the appellant's claim of no mens rea and the availability of an alternative exemption.

5.2 The appellant's primary contention is that even if the benefit of Notification No. 046/2011-Cus. is denied due to the alleged fake COO, they are eligible for the benefit of Notification No. 24/2005-CUS dated 01.03.2005, Sr. No. 23, which provides for 'nil' duty on "All goods" under CTH 8541. The imported goods, "Photovoltaic Poly Solar Cell" and "Photovoltaic Mono Perc Solar Cell," fall under CTH 85414011. It is a well-settled principle of law that an assessee is entitled to the most beneficial exemption notification available, even if not claimed initially. The Hon'ble Supreme Court in *Share Medical Care vs. Union of India*, 2007 (209) E.L.T. 321 (S.C.), unequivocally held that "if an applicant does not claim benefit under a particular notification at the initial stage, he is not barred, prohibited or estopped from claiming such benefit at a later stage." The Court further emphasized that authorities "must act reasonably and fairly" and not "deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue." This ruling was reiterated and followed by the Hon'ble CESTAT in *Commissioner of Central Excise, Noida-II vs. Indosolar Ltd.*, 2019 (367) E.L.T. 679 (Tri. - All.), and *Rallis India Ltd. vs. Commissioner of Customs (Import), Mumbai*, 2017 (358) E.L.T. 285 (Tri. - Mumbai).

5.3 The adjudicating authority, in Para 5.8 of the impugned order, observed that there was "no rhyme or reason to make out a claim for an alternate notification at this stage." This observation directly contradicts the binding pronouncements of the Hon'ble Supreme Court and various Tribunals. The adjudicating authority is bound by the principles of judicial discipline and must follow the precedents set by higher courts.

5.4 The adjudicating authority's failure to consider the Appellant's claim for an alternative, more beneficial notification, despite clear judicial pronouncements, constitutes a violation of judicial discipline. When a lower authority fails to apply binding precedents, the appellate authority has the power to remand the matter for fresh adjudication with specific directions.



5.5 Given that the adjudicating authority did not properly consider the applicability of Notification No. 24/2005-CUS and the binding judicial precedents, it is appropriate to remand the matter back for a fresh decision. This will ensure that the Appellant's claim for alternative exemption is properly examined, and the principles of judicial discipline are adhered to.

5.6 The invocation of the extended period of limitation under Section 28(4) and the imposition of penalties under Sections 114A and 114AA are contingent upon the establishment of mens rea (collusion, willful mis-statement, or suppression of facts, or knowingly/intentionally making false declarations). The Appellant has consistently argued that they had no knowledge of the COO's alleged non-authenticity and that they relied on the exporter's documents. The fact that the department's email from MITI was vague regarding the specific COO and time period further weakens the claim of mens rea on the Appellant's part.

5.7 Furthermore, if the Appellant is indeed eligible for 'nil' duty under Notification No. 24/2005-CUS, then there would be no short-levy of duty, and consequently, no basis for invoking the extended period, confiscation, or penalties. The issue of mens rea and the applicability of these sections should be re-examined by the adjudicating authority after a thorough consideration of the alternative exemption claim.

5.8 The Hon'ble CESTAT in *Lewek Altair Shipping Pvt. Ltd. vs. Commissioner of Cus., Vijayawada*, 2019 (366) E.L.T. 318 (Tri. - Hyd.), affirmed by the Supreme Court in *Commissioner v. Lewek Altair Shipping Pvt. Ltd.*, 2019 (367) E.L.T. A328 (S.C.), held that "claiming an incorrect classification or the benefit of an ineligible exemption notification does not amount to making a false or incorrect statement because it is not an incorrect description of the goods or their value but only a claim made by the assessee." This supports the appellant's contention that merely claiming an ineligible exemption does not automatically prove mens rea for penalties. Similarly, in *Sirthai Superware India Ltd. vs. Commr. Of Customs, Nhava Sheva-III*, 2020 (371) E.L.T. 324 (Tri. - Mumbai), it was held that if the goods correspond to the declaration in respect of description and value, confiscation under Section 111(m) is not applicable if the issue is merely one of classification or exemption claim.



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Therefore, a re-adjudication is necessary to properly evaluate the mens rea aspect and the applicability of confiscation and penalties after determining the eligibility for the alternative exemption.

6. The adjudicating authority's failure to consider the appellant's claim for an alternative exemption notification, despite binding judicial precedents, necessitates a remand of the matter. A fresh adjudication is required to ensure that the Appellant's claim for the benefit of Notification No. 24/2005-CUS is properly examined, and the principles of judicial discipline are followed. This re-adjudication should also re-evaluate the applicability of the extended period of limitation, confiscation, and penalties, taking into account the potential eligibility for the alternative exemption and the absence of established mens rea.

7. In view of the detailed discussions and findings above, I pass the following Order:

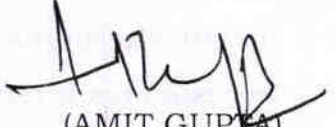


(i) I hereby set aside the Order-in-Original No. MCH/ADC/MK/197/2023-24 dated 11.10.2023.

(ii) I remand the matter back to the adjudicating authority with the direction to re-adjudicate the case afresh, after providing a reasonable opportunity of being heard to the Appellant with a specific direction to follow judicial discipline and consider the Appellant's claim for the benefit of Notification No. 24/2005-CUS dated 01.03.2005. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs - 2004(173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. - [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri. - Del)] holding that Commissioner (Appeals) has power to remand the case under Section-35A (3) of the Central Excise Act, 1944 and Section-128A (3) of the Customs Act, 1962.

8. The appeal filed by M/s. Insolation Energy Ltd. is hereby allowed by way of remand.




(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-154/CUS/MUN/2023-24

Date: 10.06.2025

1376

By Registered post A.D/E-Mail

To,
M/s. Insolation Energy Ltd.
Khasra No. 766/2, Village Bagwada,
Tehsil Amer,
Jaipur, Rajasthan - 302012

सम्पादित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Mundra.
3. The Additional Commissioner of Customs, Custom, Mundra.
4. Guard File.